Supreme Court, U.S.
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No. 96-1112

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

MARTECH USA, INC.,

Petitioner,

v.

GIL HOEFLICH,

Respondent.

Petition for Writ of Certiorari to the Court of Appeal of the State of California First Appellate District

PETITIONER'S REPLY BRIEF

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35 pp

TABLE OF CONTENTS

Page

INTRODUCTION 1

SEAMAN STATUS IN THIS COURT 2

THE RECORD IS DETAILED 3

RESPONDENT IN THIS COURT URGES A DIFFERENT RULE FROM THE RULE HE URGED IN THE TRIAL COURT AND IN THE COURT OF APPEAL—THE VOYAGE TEST 4

THE FUTURE ASSIGNMENTS WHICH RESPONDENT MIGHT HAVE EXPECTED CANNOT BE CONSIDERED A "PRESENT" ASSIGNMENT 7

PLAINTIFF'S FUTURE ASSIGNMENTS, EVEN IF THEY MAY BE CONSIDERED, WERE NOT ASSIGNMENTS TO VESSELS IN NAVIGATION THAT WOULD HAVE BEEN SUBSTANTIAL IN TERMS OF THEIR DURATION AND NATURE 7

RESPONDENT'S BASIC ASSIGNMENT DID NOT CHANGE 9

THE PETITION SEEKS REVIEW OF A FINAL JUDGMENT 9

CONCLUSION 10

TABLE OF AUTHORITIES

CASES — Page

Braen v. Pfeiffer Oil Transportation Company,
361 U.S. 129 (1959) 3

Chandris, Inc. v. Latsis, — U.S. —,
115 S. Ct. 2172 (1995) 2,4,6,9

Desper v. Starved Rock Ferry Company,
342 U.S. 187 (1952) 3

Ellender v. Kiva Construction & Engineering, Inc.,
909 F.2d 803 (5th Cir. 1990) 8

McDermott International, Inc. v. Wilander,
498 U.S. 337 (1991) 2

Papai v. Harbor Tug & Barge Company,
67 F.3d 203 (9th Cir. 1995), *cert. granted*
Harbor Tug & Barge Company v. Papai,
— U.S. — , 117 S. Ct. 36 (1996), ... 1

Senko v. La Crosse Dredging Corporation,
352 U.S. 370 (1957) 2

Southwest Marine, Inc. v. Gizoni,
502 U.S. 81 (1991) 3

Swanson v. Marra Bros., Inc.,
328 U.S. 1 (1946) 2

Tipton v. Socony Mobil Oil Company, Inc.,
375 U.S. 34 (1963) 3

STATUTES

Jones Act, 46 U.S.C. App. § 688 2

Longshore and Harbor Workers Compensation Act
33 U.S.C. § 901 *et seq.* 3, 10

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---

PETITIONER'S REPLY BRIEF

INTRODUCTION

This case, like *Papai v. Harbor Tug & Barge Company*, 67 F.3d 203 (9th Cir. 1995), *cert. granted*, *Harbor Tug & Barge Company v. Papai*, — U.S. — , 117 S. Ct. 36 (1996),[1] involves the scope of employment which

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[1] Argued before the Court on January 13, 1997, and decision pending.

must be considered in determining seaman status under the Jones Act, 46 U.S.C. App. § 688. The seaman status question in *Papai* concerns whether assignments with prior employers should be considered. The seaman status question in this case presents three choices as to the scope of employment which should be considered: assignment at the time of injury (as Respondent contended at trial and in the Court of Appeal); all assignments during the course of Respondent's employment with Petitioner (as Petitioner has consistently contended); or assignments at the time of injury together with future assignments (as the Court of Appeal held and as Respondent now contends in this Court). Together *Papai*, which involves past assignments with prior employers, and this case, which involves future assignments, complete the range of employment issues which must be considered to define Jones Act seaman status.

SEAMAN STATUS IN THIS COURT

In recent years, the Court has several times defined Jones Act seaman status. For example, in *Chandris, Inc. v. Latsis*, — U.S. — , 115 S. Ct. 2172 (1995), this Court held that seaman status requires a connection to a vessel in navigation that is substantial in terms of both its duration and its nature. In *McDermott International, Inc. v. Wilander*, 498 U.S. 337 (1991), this Court held that seaman status requires that an employee contribute to the mission of a vessel in navigation. The relationship to a vessel in navigation is central to seaman status. *Swanson v. Marra Bros., Inc.*, 328 U.S. 1 (1946). This Court has defined the term vessel for purposes of the Jones Act. *Senko v. La Crosse Dredging Corporation*, 352 U.S. 370 (1957); *Desper v. Starved Rock Ferry Company*, 342 U.S. 187 (1952).

Other elements of a Jones Act cause of action have also been determined by this Court. *See, e.g., Braen v. Pfeiffer Oil Transportation Company*, 361 U.S. 129 (1959) (a seaman must be injured in the course of his employment). The relationship between the Jones Act and the Longshore and Harbor Workers Compensation Act ("LHWCA"), 33 U.S.C. § 901 *et seq.*, has been addressed by this Court. *Southwest Marine, Inc. v. Gizoni*, 502 U.S. 81 (1991); *Tipton v. Socony Mobil Oil Company, Inc.*, 375 U.S. 34 (1963).

What remains undecided by this Court, even after *Papai* is decided later this Term, is the scope of employment that must be considered in determining the substantial connection requirement of seaman status. Petitioner respectfully suggests that this Court grant the Petition and reserve decision in *Papai* until this case may be heard. This would allow the Court to complete its definition of seaman status so that employers do not need to carry duplicative insurance, employees do not need to file duplicative claims, courts and the administrative fora can determine their respective jurisdictions, and, of great importance, federal and state courts are not burdened by inappropriate Jones Act cases.

THE RECORD IS DETAILED

The record contains very detailed evidence of Respondent's assignments during the course of his employment with Petitioner. For example, Exhibits E-1 and E-2, in Appendix to Petition, at 25a, 26a, show that Respondent, during the course of his employment with Petitioner, dived from the shore and from beaches, non-self-propelled barges (nonvessels), fixed platforms not owned or operated by Petitioner, dams, a surfboard, a truck, a vehicle

with balloon tires, an effluent outfall, and vessels not owned or operated by Petitioner. Respondent's own testimony shows that less than 25 percent of his overall dive activities in California for Petitioner were from vessels owned or operated by Petitioner, CT 165, in Appendix to Petition, at 38a. This testimony alone compels the conclusion that Respondent is not a seaman. *Chandris, Inc. v. Latsis*, —— U.S. ——, 115 S. Ct. 2172, 2191 (1995) (approving the Fifth Circuit's "rule of thumb for the ordinary case: a worker who spends less than about 30 percent of his time in the service of a vessel in navigation should not qualify as a seaman under the Jones Act"). Respondent's own testimony was that "[t]he great majority" of his diving work on the West Coast for Petitioner was not from vessels owned or operated by Petitioner, and that most of his dives for Petitioner were not from Petitioner's vessels. RT 951 in Appendix to Petition, at 34a. The testimony of Mr. Thomas, Petitioner's diving supervisor, shows that the only connection Respondent ever had with the ARCTIC CAROLYN was the assignment on the date of injury, Appendix to Petition, at 33a. Thus, the record in this case affords more than an adequate basis for choosing among the proffered rules.

RESPONDENT IN THIS COURT URGES A DIFFERENT RULE FROM THE RULE HE URGED IN THE TRIAL COURT AND IN THE COURT OF APPEAL—THE VOYAGE TEST

To vividly illustrate the present uncertainty in respect of employment issues as to Jones Act seaman status, it is useful to examine Respondent's positions in the course of this action. Respondent, in this Court—for the first time—argues that the assignments relevant to his seaman status are his assignments at the time of injury together with

the future assignments he expected. Opposition Brief, at i, 3, 5, 15, 19-20. For example, Respondent now states:

> Hoeflich has insisted all along [*sic*] that his seaman status should sink or swim on the basis of his year-long reassignment as Martech's lead diver off Point Loma.

Opposition Brief, at 5. That is not the basis on which Respondent tried this case. Respondent tried this case on the theory that the relevant assignment was solely the assignment at the time of injury:

> Mr. Hillsman [Respondent's counsel]: In my view, the cutoff is the plaintiff's assignment at the time of the accident. In this circumstance we take the position a Jones Act seaman's status sinks or swims with assignment at the time of the accident.
>
> . . . [T]he rule is that . . . a seaman's status is determined solely from assignment at the time of the injury.

RT 934-35, in Appendix to Petition, at 33a.

If this were a correct statement of the relevant employment, all maritime employees injured on vessels would be seamen, a circumstance which some of the bar would welcome, but which would greatly burden the federal and state courts hearing these actions. This test, known as the "voyage test," was expressly rejected by the Court in *Latsis*:

> [W]e must reject the initial appeal of . . . a 'voyage' test and undertake the more difficult task of developing a status-based standard.

Latsis, —— U.S. —— , 115 S. Ct. at 2185.

The voyage rule would also make unnecessary the accepted analysis of the proportion that vessel-related assignments are of all assignments. That is, if the voyage rule were adopted, there would be no need to apply the 30 percent rule (the proportion of vessel-related assignments to all assignments), *Chandris, Inc. v. Latsis*, —— U.S. —— , 115 S. Ct. 2172, 2191 (1995), because vessel-related assignments would be 100 percent of the relevant assignments.

Respondent, recognizing that he tried this case on the basis of a rule rejected by the Court in *Latsis*, now argues for a different rule: that the relevant employment is Respondent's assignment at the time of injury together with his future assignments. Respondent characterizes this combination of present and future assignments as a present "year-long . . . assignment." *See, e.g.*, Opposition Brief, at i, 5, 15, 20. As shown below, the record shows this was neither a present assignment nor a one-year assignment to a vessel in navigation or to a fleet of vessels in navigation. Thus, it becomes clear that the Court should now resolve the only remaining area of uncertainty in Jones Act seaman status—that is, the effect (if any) of projected future seaman employment—after its rulings in *Latsis*, *Papai*, and *Wilander*.

THE FUTURE ASSIGNMENTS WHICH RESPONDENT MIGHT HAVE EXPECTED CANNOT BE CONSIDERED A "PRESENT" ASSIGNMENT

Even if Respondent's future assignments could be considered in determining seaman status, the record shows that those assignments were not "present" assignments. They did not exist in the present, and might or might not have come into existence in the future. For example, the expertise for which Respondent was hired by Petitioner, in particular his expertise in driving a submersible, became unnecessary when it was decided not to lay pipe with a submersible. RT 951-52, in Appendix to Reply, at 7a-8a. Respondent's employment with Petitioner was also at will, and could have been terminated. RT 259-60, 410-11, in Appendix to Reply, at 2a-3a, 4a. This illustrates the uncertainty of basing seaman status on possible future assignments: they might, or might not, occur. This further illustrates the ease and facility with which Jones Act seaman status could be infinitely expanded by ambitious suitors—despite the Court's rulings in *Latsis*, *Papai* and *Wilander*.

PLAINTIFF'S FUTURE ASSIGNMENTS, EVEN IF THEY MAY BE CONSIDERED, WERE NOT ASSIGNMENTS TO VESSELS IN NAVIGATION THAT WOULD HAVE BEEN SUBSTANTIAL IN TERMS OF THEIR DURATION AND NATURE

Even if the future had been as Respondent expected, the future assignments which Respondent expected would not have been assignments to vessels in navigation. The record fails to support the vessel status of the craft from which Respondent claims he would have dived in the future: this is unsurprising, given that Respondent tried his case on the

theory that only the assignment at the time of injury matters.

The record nevertheless shows that the craft to which Respondent claims he would have been assigned were not Jones Act vessels. Respondent claims he would have been assigned to the HAAKON and the BETTY L, Opposition Brief, at 8, and that those craft constituted an "identifiable fleet," *id.* at 3. It is hard to have an "identifiable fleet" when the craft of that fleet have different owners. The ARCTIC CAROLYN was owned by Petitioner. RT 438, in Appendix to Petition, at 29a. The HAAKON was owned by defendant Manson Construction and Engineering Company ("Manson"). RT 118, 953, in Appendix to Reply Brief, at 2a, 8a. The BETTY L was owned by defendant Morrison Knudson Corporation ("MK") and bareboat chartered to defendant Point Loma Constructors, a joint venture between Manson and MK. RT 118-19, in Appendix to Reply Brief, at 2a.

The HAAKON and the BETTY L are not Jones Act vessels for another reason: they are not vessels *in navigation*. They lacked a crew and an independent means of propulsion. RT 885-86, 889, 896-97, in Appendix to Reply Brief, at 5a, 6a. The Coast Guard prohibited the BETTY L from carrying any persons during transits, and permitted the HAAKON to have personnel aboard only when it was moored on station. Exhibits 44 and 42, in Appendix to Reply Brief, at 9a-11a, 12a-13a. It is hard to be a crewmember of a craft without a crew. It is hard to have a transportation function, *Ellender v. Kiva Construction & Engineering, Inc.*, 909 F.2d 803 (5th Cir. 1990), when there is no power or authority to transport.

Thus, even if Respondent's future assignments could be considered on the issue of seaman status, those future

assignments would no more be assignments to Jones Act vessels than would Respondent's assignments to beaches, dams, and surfboards.

RESPONDENT'S BASIC ASSIGNMENT DID NOT CHANGE

Respondent avoids consideration of his past assignments by arguing that his "basic assignment," *Latsis*, 115 S. Ct. at 2191, changed. Opposition Brief, at 2, 14, 19. Respondent's "basic assignment" remained unchanged throughout his employment with Petitioner: he was a diver. Exhibits E-1 and E-2, in Appendix to Petition at 25a, 26a, show that diving is what Respondent did between 1987 and 1992. Respondent himself testified that 95 percent of his employment with Petitioner was employment as a diver. RT 263, lines 13-25, in Appendix to Reply Brief, at 3a. He dived in different locations and from different platforms, but diving was consistently his assignment. An assignment does not change when its location changes: if it did, past assignments could never be considered in determining seaman status.

The rule of law urged by Respondent is erroneous. Also erroneous is Respondent's procrustean attempt to make the facts fit his erroneous law. The law as to employment, present and future, in establishing Jones Act seaman status needs to be resolved, to complete the Court's several efforts to define Jones Act seaman status.

THE PETITION SEEKS REVIEW OF A FINAL JUDGMENT

Petitioner seeks review of the decision of the Court of Appeal in an appeal taken from the final judgment in

Petitioner's favor, the final judgment entered on the order granting Petitioner's motion for judgment notwithstanding the verdict. Final Judgment, in Appendix to Petition, at 13a. The "Judgment on Special Verdict" in Respondent's favor was not the judgment reversed by the Court of Appeal, is not the judgment that is the subject of the Petition, and was ruled final on February 11, 1997.[2]

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that its Petition be granted.

Respectfully submitted,
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February 24, 1997

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[2] Respondent is mistaken in other respects, Opposition Brief, at 5, 6, 9-10, 18, 20. The record is clear that $290,766.28 has been paid by or on behalf of Petitioner to Respondent, $252,211.75 of that amount after service of the complaint. Exhibit G, Appendix to Reply Brief, at 14a-20a. *Amicus curiae*, in its Brief in Support of Respondent, at 1 n.1, states that Petitioner's LHWCA carrier paid Respondent $20,000. (Petitioner objects to the representation of INA by the same counsel, Laughlin, Falbo, Levy & Moresi, which INA appointed to represent Petitioner in Respondent's LHWCA proceeding, and to its taking a position adverse to the interest of Petitioner, its former client.)

APPENDIX

APPENDIX

[Excerpts From Reporter's Transcripts of Proceedings
Volumes I, II, III, V, VI]

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY
OF SAN FRANCISCO

BEFORE THE HON. WINSLOW CHRISTIAN,
ASSIGNED

No. 950673

GIL HOEFLICH,

Plaintiff,

vs.

MARTECH INTERNATIONAL, et al.,

Defendants.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME I

December 12, 1994

* * * *

[118] [Q] MR. HILLSMAN: The BETTY L was owned by whom, sir?

[A] [TIMOTHY ARTHUR HANSON, SUPERINTENDENT FOR MANSON CONSTRUCTION:] I believe Morrison-Knudsen.

[Q] The Artic Carolyn was owned by Martech?

[A] Best of my knowledge.

[Q] THE HAAKON by Manson?

[A] Yes.

[Q] THE BETTY L. by M.K.?

[A] Yes.

* * * *

VOLUME II

December 13, 1994

* * * *

[259] Q. [MR. HILLSMAN:] And did you remain steadily employed with Martech throughout your employment with Martech throughout your employment in the dive industry, or did you work for other employers?

A. [PLAINTIFF] In the Gulf of Mexico, primarily Martech. When I came out to California it was, I'd have to say, around 99 percent Martech.

Q. When did you come to California?

A. I believe that was in '85. Around there.

Q. And when you worked for Martech, what types of work did you do for them? What were your jobs with Martech?

A. Both in the Gulf and in California?

Q. Let's talk about California. For example, did you ever work in the shop?

A. Yes. Loading out jobs, working on some of their equipment.

Q. You were present when John Sabo testified?

A. Yes.

Q. He told us that he worked for Martech as a diver/mechanic.

A. Yes.

Q. You recall that he indicated he worked steadily for the company in the shop between dive jobs. Was that your experience?

A. No.

Q. Did you remain steady for Martech on a [260] 52-week year, or did you work on a project-by-project basis?

A. Basically job to job, wherever they have a job. Sometimes they need help here and there loading out jobs. I worked in the shop on that.

* * * *

[263] Q. [MR. HILLSMAN:] What fraction or percentage of your overall work for Martech involved supervision, where you did not go in the water, where you supervised the job topside as a pure diving supervisor?

A.[PLAINTIFF] Never getting in the water on the job?

Q. Correct.

A. Very little.

Q. Five percent? 10 percent? 15 percent?

A. Five percent, something like that.

Q. The overwhelming majority of your work with Martech involved work where you labored on the bottom as a wet diver; is that correct, sir?

A. Yes.

* * * *

VOLUME III

December 14, 1994

* * * *

[410] Q. [MR. HILLSMAN:] Now, let's talk a minute on how Martech hired its divers. As general employer for the company, you were a permanent employee, were you not?

A. [TED ROCHE, VICE PRESIDENT, MARTECH, U.S.A., INC.:] That is correct.

Q. You stayed on, project in project out?

A. That is correct.

Q. Was that also true of your divers?

A. We had -- the divers were paid -- none were in salaried a position. They were paid the days and hours they worked.

Q. Basically, the divers were hired on a project-by-project basis; isn't that correct?

A. Yes.

[411] Q. Some divers like Gil were hired again and again, project after project?

A. Depending on his availability, correct.

Q. Between projects you didn't expect Gil to stand by and hold himself available for you; if he had an opportunity elsewhere, he could take it?

A. He did.

Q. That's what you meant when you said depending on availability?

A. That is correct.

* * * *

VOLUME V

December 19, 1994

* * * *

[885] [Q] [MR. HILLSMAN:] THE HAAKON, unlike the ARCTIC CAROLYN, is not equipped with an engine?

[A] [ED THOMAS, MARTECH DIVING SUPERVISOR:] No.

[Q] She is typically towed by tug?

[886] [A] Yes.

[Q] Once on site and she has her anchors in place, she can move back and forth on the anchors by means of winches; is that correct?

[A] Yes.

[Q] She has diesel-powered anchor winches?

[A] I believe so, yes.

[Q] Carries on her diesel fuel?

[A] Only in the equipment. I don't believe there is fuel storage tanks.

* * * *

[889] [Q] [MR. HILLSMAN:] You are aware that the Betty L was towed by sea from the Golden Gate all the way down to National City for this project?

[A] [ED THOMAS, MARTECH DIVING SUPERVISOR:] Yes.

* * * *

[896] [Q] [MR. KOELZER:] When THE HAAKON and the Betty L went to the job site, did they sail by themselves, or were they towed out?

[A] [ED THOMAS, MARTECH DIVING SUPERVISOR:] Towed out.

[Q] If they were to be moved from one place, from job site to job site, or a distance a mile or two or three, they couldn't do it by themselves?

[A] No.

[Q] They didn't have power?

[A] No.

[Q] Didn't have bunks or living quarters on board, did they?

[A] No. As I understand, we -- when we were not on anchor, we couldn't be on board.

[Q] You had to have a crew boat?

[A] Yes.

[Q] Nobody could remain or live on board, could they?

[A] I don't know that they could. I am not sure of the circumstances there. No one did.

MR. KOELZER: Were [*sic*] are those Coast Guard Certificates, your honor?

[Q] Take a look at the Coast Guard Certificates put in evidence for the Haakon and the Betty L. Have you ever seen a Coast Guard [897] Certificate before?

[A] I have seen them, yes.

[Q] Take a look at each. Tell me what it says about the crew on the Haakon and the crew on the

Betty L. What is the crew required by the Coast Guard on each of them? Is there any?

[A] Zero, zero.

[Q] Zero, zero, and zero. As a matter of fact, you could attest to the fact there was no permanent crew aboard either the Haakon or the Betty L; wouldn't you agree?

[A] That is correct.

* * * *

VOLUME VI
December 20, 1994

* * * *

[951] Q. [MR. KOELZER:] When you were first made aware of the Point Loma extension job, was it your understanding that a [952] submarine was going to be used to lay the extension pipe?

A.[PLAINTIFF:] Yes. That's what I was told.

Q. And it came to pass that the submarine was impractical, so they used what is called the horse from the Betty L; is that correct?

A. It could be.

Q. You don't recall.

A. No.

Q. Were you ever told that you would be working as a submarine pilot on the Point Loma job during the pre-dive meeting? Were you ever told that?

A. Not during a pre-dive meeting.

Q. Were you ever told anywhere you would be working as a submarine pilot on the Point Loma job?

A. Yes. When they were bidding the job.

Q. Pardon?

A. When they were bidding the job.

* * * *

[953] Q. [MR. KOELZER:] It is your understanding that the vessel Haakon was owned by Manson; is that correct?

A. [PLAINTIFF:] Yes.

EDITOR'S NOTE

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CERTIFICATION DATE: 23APR92

EXPIRATION DATE: 23APR94

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

Certificate of Inspection

VESSEL NAME	OFFICIAL NUMBER	CALL SIGN	SERVICE
BETTY L	D652734	WRB5942	INDUSTRIAL VESSEL

HOME PORT	HULL MATERIAL	HORSEPOWER	PROPULSION
PORTLAND, OR	STEEL		NONE

PLACE BUILT	DATE BUILT	GROSS TONS	NET TONS	DWT	LENGTH
PORTLAND OR	01JAN82	6103	6103		420.00

OWNER	OPERATOR
MORRISON KNUDSEN CO., INC. 1 MORRISON KNUDSEN PLAZA P.O. BOX 7808 BOISE, ID 83729	MORRISON KNUDSEN CO., INC. 1 MORRISON KNUDSEN PLAZA P.O. BOX 7808 BOISE, ID 83729

THIS VESSEL MUST BE MANNED WITH THE FOLLOWING LICENSED AND UNLICENSED PERSONNEL, INCLUDED IN WHICH THERE MUST BE 0 CERTIFICATED LIFEBOATMEN AND 0 CERTIFICATED TANKERMAN.

___MASTER	___ MASTER & 1ST CLASS PILOT	___ ABLE SEAMEN	___ CHIEF ENGINEER	___ FIREMEN-WATERTENDERS
___CHIEFMATE	___ _____ CLASS PILOT	___ ORDINARY SEAMEN	___ 1ST ASST. ENGINEER	___ OILERS
___2ND MATE	___ RADIO OFFICER(S)	___ DECKHANDS	___ 2ND ASST. ENGINEER	___ _____
___ _____MATES	___ _____OPERATOR(S)	___ _____	___ _____ENG'RS.	___ _____

IN ADDITION, THIS VESSEL MAY CARRY 0 PASSENGERS, 0 OTHER PERSONS IN CREW, 12 PERSONS IN ADDITION TO CREW, AND _____. TOTAL PERSONS ALLOWED: 12

E PERMITTED AND CONDITIONS OF OPERATION:

*** OCEANS ***

CERTIFICATED WITHOUT A NAVIGATION CREW. THE BARGE MAY CARRY CONSTRUCTION PERSONNEL WITH NO DUTIES CONNECTED WITH THE NAVIGATION OF THE BARGE. DURING TRANSITS NO PERSONNEL SHALL BE CARRIED ABOARD THE BARGE.

AN ATTENDING VESSEL MUST BE ALONGSIDE WHILE PERSONNEL ARE ABOARD THE BARGE. THE ATTENDING VESSEL MUST HAVE SUFFICIENT CAPACITY TO ACCOMODATE ALL PERSONS ABOARD THE BARGE.

A MAXIMUM OF 12 PERSONS MAY BE ABOARD DURING CONSTRUCTION OPERATIONS; ONE TYPE I PERSONAL FLOTATION DEVICE MUST BE CARRIED FOR EACH PERSON ABOARD THE BARGE.

THE BARGE WILL PROVIDE NO OVERNIGHT ACCOMODATIONS.

*** SEE NEXT PAGE FOR ADDITIONAL CERTIFICATE INFORMATION ***

WITH THIS INSPECTION HAVING BEEN COMPLETED AT RIO VISTA, CALIFORNIA ON 23APR92, THIS VESSEL IS CERTIFIED BY THE OFFICER IN CHARGE, MARINE INSPECTION, SAN FRANCISCO BAY, TO BE IN ALL RESPECTS IN CONFORMITY WITH THE APPLICABLE VESSEL INSPECTION LAWS AND THE RULES AND REGULATIONS PRESCRIBED THEREUNDER.

PERIODIC REINSPECTIONS

DATE	ZONE	SIGNATURE
20APR93	SFCMS	

THIS CERTIFICATE ISSUED BY:

J.M. MACDONALD, CAPT, USCG
OFFICER IN CHARGE, MARINE INSPECTION

SAN FRANCISCO BAY
INSPECTION ZONE

DEPT. OF TRANSP., USCG, CG-841 (Rev. 3-85)
PREVIOUS EDITIONS ARE OBSOLETE

SN 7530-00-FO1-0370

PLC-R00586

9a

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

SHEET 2 OF 3

Certificate of Inspection

.TY L PAGE 2 CERTIFICATION DATE: 23APR92

--- HULL EXAMS ---

-EXAM TYPE-	-NEXT EXAM-	-LAST EXAM-	-PRIOR EXAM-
DRYDOCK	26MAY94	08JAN92	26MAY89
INTERNAL STRUCTURAL	26MAY94	08JAN92	26MAY89

--- STABILITY ---

LETTER APPROVAL DATE/ 23JUN92 OFFICE/ GMSC

--- INSPECTION STATUS ---

FUEL TANKS

-TANK IDENTIFICATION-	-DATE EXAMINED-
NO. 1 STBD	26MAY89

PRESSURE VESSELS

TYPE	LOCATION	LAST	NEXT
AIR RECEIVER	WINCH ROOM	23APR92	23APR94
AIR RECEIVER	GEN ROOM	23APR92	23APR94
AIR RECEIVER	GEN ROOM	23APR92	23APR94
AIR RECEIVER	CRANE HOUSE	23APR92	23APR94
AIR RECEIVER	GEN ROOM	23APR92	23APR94
AIR RECEIVER	WINCH ROOM	23APR92	23APR94

LIFESAVING

LIFEBOAT/RAFT IDENTIFICATION	SERVICED/ REFURBISHED	WEIGHT TEST	FALLS RENEWED
VIKING	17APR92		
SWITLIK	21APR92		

--- LIFESAVING EQUIPMENT ---

	NUMBER PERSONS			REQUIRED
TOTAL EQUIPMENT FOR		12	LIFE PRESERVERS(ADULT)...	12
LIFEBOATS(TOTAL).....			LIFE PRESERVERS(CHILD)...	
LIFEBOATS(PORT)*.....			RING BUOYS(TOTAL).....	2
LIFEBOATS(STARBD)*...			WITH LIGHTS*.....	2
MOTOR LIFEBOATS*.....			WITH LINE ATTACHED*....	2
LIFEBOATS W/RADIO*...			OTHER*.....	
RESCUE BOATS/PLATFORMS.			IMMERSION SUITS.....	12
INFLATABLE RAFTS.....	2	12	PORTABLE LIFEBOAT RADIOS.	
LIFE FLOATS/BUOYANT APP			EQUIPPED WITH EPIRB?.....	NO
WORKBOATS (NOT REQUIRED)			(* INCLUDED IN TOTALS)	

--- FIRE FIGHTING EQUIPMENT ---

TOTAL HOSE LENGTH/ 150 NUMBER OF FIRE AXES/ NUMBER OF FIRE PUMPS/ 2

FIRE EXTINGUISHERS - HAND PORTABLE AND SEMI-PORTABLE

A-II	1 B-I	9 B-II	B-III
B-IV	2 B-V	C-I	C-II

*** SEE NEXT PAGE PLEASE ***

10a

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

Certificate of Inspection

.TY L CERTIFICATION DATE: 23APR92

--- CERTIFICATE AMENDMENTS ---

1. PORT AMENDING/ SFCMS DATE AMENDED/ 15OCT92

-AMENDMENT-

UPDATED STABILITY LETTER DATE.

*** END ***

DEPT. OF TRANSP., USCG, CG-841 (Rev. 3-85)
PREVIOUS EDITIONS ARE OBSOLETE

PLC-R00588

SN 7530-00-FO1-0370

RECEIVED
AUG 1
LUMA CONSTRUCTORS
CONTRACT NO. 3378

CERTIFICATION DATE: 07NOV91
EXPIRATION DATE: 07NOV93

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

Certificate of Inspection

VESSEL NAME	OFFICIAL NUMBER	CALL SIGN	SERVICE
HAAKON	D246141	WBX6777	UNCLASSIFIED VESS.

HOME PORT	HULL MATERIAL	HORSEPOWER	PROPULSION
SEATTLE, WA	STEEL		NONE

PLACE BUILT	DATE BUILT	GROSS TONS	NET TONS	DWT	LENGTH
SAUSALITO CA	01JAN43	2490	2490		279.80

OWNER
MANSON CONSTRUCTION & ENGINEERING
P O BOX 24067
SEATTLE, WA 98124

OPERATOR
MANSON CONSTRUCTION & ENGINEERING
P O BOX 24067
SEATTLE, WA 98124

THIS VESSEL MUST BE MANNED WITH THE FOLLOWING LICENSED AND UNLICENSED PERSONNEL, INCLUDED IN WHICH THERE MUST BE 0 CERTIFICATED LIFEBOATMEN AND 0 CERTIFICATED TANKERMAN.

___ MASTER	___ MASTER & 1ST CLASS PILOT	___ ABLE SEAMEN	___ CHIEF ENGINEER	___ FIREMEN/WATERTENDERS
___ CHIEFMATE	___ ___ CLASS PILOT	___ ORDINARY SEAMEN	___ 1ST ASST. ENGINEER	___ OILER
___ 2ND MATE	___ RADIO OFFICER(S)	___ DECKHANDS	___ 2ND ASST. ENGINEER	___ ___
___ ___ MATES	___ ___ OPERATOR(S)	___ ___	___ ___ ENGRS.	___ ___

IN ADDITION, THIS VESSEL MAY CARRY 0 PASSENGERS, ___ OTHER PERSONS IN CREW, ___ PERSONS IN ADDITION TO CREW, AND 6 INDUSTRIAL PERSONNEL, TOTAL PERSONS ALLOWED: 6

ROUTE PERMITTED AND CONDITIONS OF OPERATION:

OCEANS

THIS VESSEL MAY OPERATE AS A DECK CARGO BARGE OR AS A DERRICK BARGE IN ACCORDANCE WITH ITS STABILITY LETTER ISSUED 04 MAY 1992.

ALTHOUGH CERTIFICATED WITHOUT A NAVIGATING CREW, UP TO 6 INDUSTRIAL PERSONNEL ARE ALLOWED WHEN MOORED ON STATION.

AN ASSIST VESSEL IS REQUIRED TO BE ALONGSIDE THE BARGE AT ALL TIMES WHEN THE VESSEL IS MANNED.

THE DECK CRANE BOOM SHALL BE IN THE STOWED POSITION WHILE THE VESSEL IS UNDERWAY.

INSPECTIONS SAN Diego 619 5575/88

*** SEE NEXT PAGE FOR ADDITIONAL CERTIFICATE INFORMATION ***

WITH THE INSPECTION HAVING BEEN COMPLETED AT SEATTLE, WASHINGTON ON 07NOV91 THIS VESSEL IS CERTIFIED BY THE OFFICER IN CHARGE, MARINE INSPECTION: PUGET SOUND TO BE IN ALL RESPECTS IN CONFORMITY WITH THE APPLICABLE VESSEL INSPECTION LAWS AND THE RULES AND REGULATIONS PRESCRIBED THEREUNDER.

PERIODIC REINSPECTIONS		
DATE	ZONE	SIGNATURE

THIS CERTIFICATE ISSUED BY:

ROGER D. MOWERY, CAPT, USCG
OFFICER IN CHARGE, MARINE INSPECTION
PUGET SOUND
INSPECTION ZONE

DEPT. OF TRANSP., USCG, CG-841 (REV. 8-85)
PREVIOUS EDITIONS ARE OBSOLETE
GPO 1986-491-028/42178

12a

File: 27-22

EXHIBIT 10

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

Certificate of Inspection

AKDN PAGE 2 CERTIFICATION DATE: 07NOV91

--- HULL EXAMS ---

-EXAM TYPE-	-NEXT EXAM-	-LAST EXAM-	-PRIOR EXAM-
DRYDOCK	25SEP94	07NOV91	25SEP89
INTERNAL STRUCTURAL	25SEP94	07NOV91	25SEP89

--- STABILITY ---

LETTER - APPROVAL DATE/ 04MAY92 - -OFFICE/ BEAMB

--- INSPECTION STATUS ---

FUEL TANKS

-TANK IDENTIFICATION-	-DATE EXAMINED-
2C	07NOV91

PRESSURE VESSELS

TYPE	LOCATION	LAST	NEXT
AIR RECEIVER	DECK	07NOV91	07NOV93
AIR RECEIVER	CRANE	07NOV91	07NOV93
AIR RECEIVER	CRANE	07NOV91	07NOV93

--- LIFESAVING EQUIPMENT ---

	NUMBER PERSONS		REQUIRED
TOTAL EQUIPMENT FOR	6	LIFE PRESERVERS(ADULT)...	6
LIFEBOATS(TOTAL).....		LIFE PRESERVERS(CHILD)...	
LIFEBOATS(PORT)*.....		RING BUOYS(TOTAL).....	2
LIFEBOATS(STARBD)*...		WITH LIGHTS*.....	
MOTOR LIFEBOATS*.....		WITH LINE ATTACHED*....	2
LIFEBOATS W/RADIO*...		OTHER*.....	
RESCUE BOATS/PLATFORMS.	1	IMMERSION SUITS.....	
INFLATABLE RAFTS.....		PORTABLE LIFEBOAT RADIOS.	
LIFE FLOATS/BUOYANT APP		EQUIPPED WITH EPIRBS?.....	NO
WORKBOATS (NOT REQUIRED)		(* INCLUDED IN TOTALS)	

--- FIRE FIGHTING EQUIPMENT ---

TOTAL HOSE LENGTH/ NUMBER OF FIRE AXES/ 2 NUMBER OF FIRE PUMPS/

FIRE EXTINGUISHERS - HAND PORTABLE AND SEMI-PORTABLE

A-II	B-I	4 B-II	B-III
B-IV	B-V	C-I	2 C-II

--- CERTIFICATE AMENDMENTS ---

1. PORT AMENDING/ SEAMS DATE AMENDED/ 04MAY92

-AMENDMENT-

CHANGED OPERATING DETAILS TO ALLOW VSL TO OPERATE AS A DECK CARGO BARGE OR DERRICK BARGE IN OCEAN SERVICE. REISSUED STABILITY LTR.

*** END ***

George J. Koelzer (State Bar No. 164156)
Matthew P. Kesner (State Bar No. 120596)
Carolyn J. Shields (State Bar No, 169911)
LANE POWELL SPEARS LUBERSKY
333 South Hope Street, Suite 2400
Los Angeles, California 90071-3033
Telephone: (213) 680-1010
Facsimile: (213) 680-1784

Attorneys for Defendants
MARTECH USA, INC., POINT LOMA CONSTRUCTORS,
MANSON CONSTRUCTION & ENGINEERING CO.
and MORRISON KNUDSEN CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

No. 950673
STIPULATION

GILBERT [SIC] HOEFLICH

Plaintiff,

v.

MARTECH INTERNATIONAL, INC.,
MARTECH USA INC, POINT LOMA CONSTRUCTORS,
A Joint Venture, between Morrison Knudsen Corp.
and Manson Construction & Engineering Co.,
MORRISON KNUDSEN CORP., MANSON CONSTRUCTION
& ENGINEERING CO., RED & WHITE DIVING, INC.,
AND DOES 1 through 25

Defendants.

EXHIBIT G

IT IS STIPULATED by and between GIL HOEFLICH, plaintiff (hereinafter "plaintiff"), and MARTECH USA, INC., POINT LOMA CONSTRUCTORS, a Joint Venture between Morrison Knudsen Corp. and Manson Construction & Engineering Co., MORRISON KNUDSEN CORP., and MANSON CONSTRUCTION & ENGINEERING CO., defendants, through their respective counsel, that the amounts set forth herein have been paid by defendants to or on behalf of plaintiff in respect of the alleged losses which are the subject of this action.

Date	Payor	Payee	Check No.	Other Amount	Medical Amount
09-13-92	Martech	Gil Hoeflich		$ 2700	
10-02-92	Martech; see Ltr TR to GH, 11-06-92	Gil Hoeflich		$ 2000	
11-04-92	Martech; see Ltr TR to GH, 11-06-92	Gil Hoeflich		2000	
11-06-92	Kelly Cox	Gil Hoeflich	104	3000	
11-10-92	Kelly Cox	UCSD Medical Group			7884.53
11-17-92	Kelly Cox	Gil Hoeflich	See Ltr KC to GH 11-17-92	2000	

Date	Payor	Payee	Check No.	Other Amount	Medical Amount
11-30-92	Kelly Cox	Gil Hoeflich	108	2000	
12-08-92	Kelly Cox	Gil Hoeflich	111	2000	
12-21-92	Kelly Cox	UCSD Medical Group	112		628
12-21-92	Kelly Cox	Sansum Medical Clinic			98
12-29-92	Kelly Cox	Gil Hoeflich	114	2000	
01-25-93	Kelly Cox	Gil Hoeflich	116	4000	
02-10-93	Kelly Cox	Gil Hoeflich	119	2000	
02-24-93	Kelly Cox	Gil Hoeflich	120	2000	
03-08-93	Kelly Cox	Gil Hoeflich	122	2000	
03-22-93	Kelly Cox	Gil Hoeflich		2000	
03-23-93	Kelly Cox	Sansum Medical Clinic			244
04-30-93	LPSL Trust Account (T/A)	Nobbe Ortho-pedics, Inc.	2920		450

Date	Payor	Payee	Check No.	Other Amount	Medical Amount
05-26-93	LPSL T/A	UCSD Medical Group	2159		23411.53
05-26-93	LPSL T/A	UCSD Medical Group	2161		880.61
06-02-93	LPSL T/A	UCSD Medical Group	2165		25644.51
06-16-93	LPSL T/A	Gil Hoeflich	2166		240.22
06-16-93	LPSL T/A	Nobbe Ortho-pedics, Inc.	2167		615.00
07-08-93	LPSL T/A	Santa Barbara Cottage Hospital	2169		7455.69 (not yet presented)
07-28-93	LPSL T/A	UCSD Medical Center	2173		159871.75
09-10-93	LPSL T/A	Nobbe Ortho-pedics, Inc.	2175		100.00
12-16-93	LPSL T/A	Gil Hoeflich	2178	10,000.00	
12-93	CIGNA	Gil Hoeflich		10,000.00	

Date	Payor	Payee	Check No.	Other Amount	Medical Amount
09-01-94	LPSL T/A	Nobbe Othho-pedics	58905		500.00
09-01-94	LPSL T/A	J.P. Blan-chard, M.D.	58906		322.00
09-01-94	LPSL T/A	Santa Barbara Founda-tion Clinic	58907		2314.10
09-01-94	LPSL T/A	Santa Barbara Cottage Hospital Patient Accounts	58908		4093.69
09-01-94	LPSL T/A	Gil Hoeflich	58909		2292.83
09-15-94	LPSL T/A	Sansum Medical Clinic	1179		94.62
09-15-94	LPSL T/A	Victor Taccon-elli, M.D.	1180		705.00
09-15-94	LPSL T/A	Doctor's Clinic (Larry Hazen)	1181		164.70

Date	Payor	Payee	Check No.	Other Amount	Medical Amount
09-15-94	LPSL T/A	Chil-dren's Hospital	1182		2056.00
09-19-94	LPSL T/A	Gil Hoeflich Sansum 342. Tacc. 580. Drs' 77.50			999.50
TOTALS				49.700	241.066.28

The parties stipulate as follows:

The figures set forth above are true and correct.

The total amount of medical payments made by defendants to or or [sic] behalf of plaintiff is $241,066.28 (Two Hundred Forty-One Thousand Sixty-Six and 28/100ths Dollars).

The total amount of nonmedical payments made by defendants to or on behalf of plaintiff is $49,700 (Forty-Nine Thousand Seven Hundred and 00/100ths Dollars).

The total amount of payments made by defendants to or on behalf of plaintiff is $290,766.28 (Two Hundred Ninety Thousand Seven Hundred Sixty-Six and 28/100ths Dollars).

Each of the payments set forth herein shall be inadmissable on the issue of the liability of any of the defendants in this action for the loss or damage claimed by plaintiff, and each of said payments shall be subject to a limiting instruction that it may not be considered by the jury

to prove the liability of any defendant for the loss or damage, or any part of the loss or damage, claimed by plaintiff, pursuant to section 1152(a) of the Evidence Code.